

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
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DATE FILED: 5/4/2016

-----X  
UNITED STATES OF AMERICA,

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendant.  
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: 16 Civ. 3280 (ER)  
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**STIPULATION AND ORDER OF  
SETTLEMENT AND DISMISSAL**

This Stipulation and Order of Settlement and Dismissal (the “Stipulation”) is entered into by the United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, and on behalf of the Office of Inspector General of the United States Department of Health and Human Services (“OIG-HHS”) (collectively, the “United States” or the “Government”), and the City of New York (the “City”) (together with the Government, the “Parties”), through their authorized representatives.

WHEREAS, the New York City Fire Department (the “FDNY”), an agency of the City, provides emergency ambulance services throughout the City, including to individuals eligible to receive benefits through the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (“Medicare”);

WHEREAS, from October 2008 through and including October 2012 (the “Covered Time Period”), the FDNY submitted reimbursement claims to Medicare for emergency ambulance services provided to individuals eligible to receive benefits through Medicare;

WHEREAS, providers of emergency ambulance services are only eligible to receive reimbursement from Medicare for an ambulance service “where the use of other methods of

transportation is contraindicated by the individual's condition" (42 U.S.C. § 1395x(s)(7)) (the "Medicare medical necessity requirement");

WHEREAS, during the Covered Time Period, the FDNY, through its ambulance billing contractor, submitted claims to Medicare for reimbursement for emergency ambulance services, including claims for which the FDNY had determined, and identified in the claims submitted, that the emergency ambulance services did not meet the Medicare medical necessity requirement;

WHEREAS, during the Covered Time Period, and as set forth in the complaint, the FDNY, through its ambulance billing contractor, submitted to Medicare thousands of claims for emergency ambulance services that the FDNY had identified in the claims submitted to Medicare as not meeting the Medicare medical necessity requirement, and received reimbursements from Medicare for such claims (the "Covered Conduct");

WHEREAS, the FDNY voluntarily disclosed to the Government that it had consistently been receiving reimbursements from Medicare for claims for emergency ambulance services that it had identified to Medicare as not meeting the Medicare medical necessity requirement; and

WHEREAS, the Parties have agreed on a full and final mutually agreeable resolution of the Covered Conduct,

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The City consents to this Court's exercise of personal jurisdiction over it with respect to this action.
2. The City admits, acknowledges, and accepts responsibility for the following:
  - a. The FDNY, through its Bureau of Emergency Medical Services, provides emergency ambulance services throughout the City of New York, including to patients eligible

for Medicare. FDNY ambulances are dispatched in response to 9-1-1 calls for emergency medical assistance.

b. To receive payment for emergency ambulance services provided to patients eligible for Medicare, the FDNY, through its ambulance billing contractor, submits claims to Medicare containing required information about each service.

c. During the Covered Time Period, emergency ambulance services for patients eligible for Medicare were only reimbursable from Medicare if those services were finally determined to meet the Medicare medical necessity requirement.

d. During the Covered Time Period, the FDNY, through its ambulance billing contractor, submitted claims to Medicare for reimbursement for emergency ambulance services. As part of the claim submission process, the FDNY made its assessments as to whether the emergency ambulance services associated with each claim met the Medicare medical necessity requirement.

e. During the Covered Time Period, the FDNY determined that thousands of claims for emergency ambulance services did not satisfy the Medicare medical necessity requirement, and provided information in the claims reflecting that determination to National Government Services ("NGS"), a Medicare Administrative Contractor, as part of the claim submission process.

f. During the Covered Time Period, the FDNY consistently received reimbursements from Medicare for claims submitted to Medicare for emergency ambulance services that FDNY had identified in the claims as not meeting the Medicare medical necessity requirement. During the Covered Time Period, the FDNY was aware that Medicare was consistently paying the FDNY for such claims. The FDNY did not take steps to inform

Medicare of its consistent receipt of Medicare reimbursement for such claims until December 2012.

g. On or about December 6, 2012, the FDNY sent a letter to NGS and the United States Attorney's Office, reporting, among other things, that the FDNY had been consistently receiving reimbursements for claims for emergency ambulance services that FDNY had identified in the claims as not meeting the Medicare medical necessity requirement. The letter sought guidance regarding the submission of such claims going forward and obligations as to claims previously submitted, and noted that the FDNY was suspending submission of claims for services that may not be medically necessary.

h. In or around September 2013, the FDNY modified its claiming procedures to reduce the risk that the FDNY would be improperly reimbursed for claims for emergency ambulance services that were not medically necessary.

3. The City agrees to pay to the United States, no later than thirty business days after the Effective Date of this Stipulation, the sum of four million, three hundred thousand dollars (\$4,300,000) (the "Settlement Amount"). The City shall make this payment by electronic funds transfer pursuant to written instructions from the United States Attorney's Office for the Southern District of New York.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon the City's full payment of the Settlement Amount, the United States releases the City and all of its agencies and departments, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law theories of payment by mistake, unjust enrichment, and fraud.

5. In consideration of the obligations of the City under this Stipulation, and conditioned upon the City's full payment of the Settlement Amount, the Office of the Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") releases the City and all of its agencies and departments from any claims or causes of action it may have against the City under 42 U.S.C. § 1320a-7(b)(7), and agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against the City and all of its agencies and departments under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities), for the Covered Conduct. The OIG and HHS do not agree to waive any rights, obligations, or causes of action other than those specifically referred to in this Paragraph and Paragraph 4. This release is applicable only to the City and its agencies and departments and is not applicable in any manner to any other individual, partnership, corporation, or entity.

6. Notwithstanding the releases given in Paragraphs 4 and 5 of this Stipulation, or any other term of this Stipulation, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Stipulation, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Stipulation; and

f. Any liability of individuals.

7. The City waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Stipulation constitutes an agreement by the United States concerning the characterization of the City for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. The City fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the City has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

9. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and the City agrees not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

10. The City agrees to the following:

a. *Unallowable Costs Defined:* All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social

Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the City, its present or former officers, directors, employees, and agents in connection with:

- i. the matters covered by this Stipulation;
- ii. the United States' audit(s) and civil investigation(s) of the matters covered by this Stipulation;
- iii. The City's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Stipulation (including attorney's fees);
- iv. the negotiation and performance of this Stipulation; and
- v. the payment the City makes to the United States pursuant to this Stipulation,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program ("FEHBP") (hereinafter referred to as "Unallowable Costs").

b. *Future Treatment of Unallowable Costs:* Unallowable Costs shall be separately determined and accounted for by the City, and the City shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by the City to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. *Treatment of Unallowable Costs Previously Submitted for Payment:* The City further agrees that within 90 days of the Effective Date of this Stipulation it shall identify to

applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by the City, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. The City agrees that the United States, at a minimum, shall be entitled to recoup from it any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by the City or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on the City's cost reports, cost statements, or information reports.

d. Nothing in this Stipulation shall constitute a waiver of the rights of the United States to audit, examine, or re-examine the City's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

11. The City agrees that it waives and shall not seek payment for any of the health care billings covered by this Stipulation from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as Covered Conduct.

12. The Effective Date of this Stipulation is the date it is entered by the Court.



13. Subject to the exceptions set forth in this Stipulation, and in consideration of the City's obligations in this Stipulation, conditioned upon the City's full payment of the Settlement Amount, the complaint is hereby dismissed with prejudice.

14. This Stipulation is binding on the City's successors, transferees, heirs, and assigns.

15. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

16. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity.

17. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

18. Each Party and signatory to this Stipulation represents that it freely and voluntarily enters in to this Stipulation without any degree of duress or compulsion.

19. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

20. This Stipulation constitutes the complete agreement between the Parties. This Stipulation may not be amended except by written consent of the Parties.

21. The undersigned counsel represent and warrant that they are fully authorized to execute this Stipulation on behalf of the entities indicated below.

**FOR THE UNITED STATES**

Dated: New York, New York  
April 29, 2016

PREET BHARARA  
United States Attorney for the  
Southern District of New York

By: Andrew Krause  
REBECCA C. MARTIN  
ANDREW E. KRAUSE  
Assistant United States Attorneys  
86 Chambers Street, Third Floor  
New York, New York 10007  
*Counsel for the United States*

Dated: Washington, D.C.  
April 3, 2016  
*May*

UNITED STATES DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, OFFICE OF COUNSEL TO THE  
INSPECTOR GENERAL

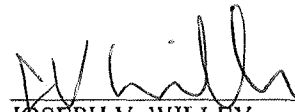
By: Robert K. DeConti  
Robert K. DeConti  
Assistant Inspector General for Legal Affairs  
Cohen Building, Room 5527  
330 Independence Avenue, SW  
Washington, D.C. 20201

**FOR THE CITY OF NEW YORK**

Dated: New York, New York  
April 29, 2016

KATTEN MUCHIN ROSENMAN LLP


By:

  
JOSEPH V. WILLEY  
575 Madison Avenue  
New York, New York 10022-2585

Dated: New York, New York  
April 29, 2016

ZACHARY W. CARTER  
Corporation Counsel of the City of New York  
100 Church Street  
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By:

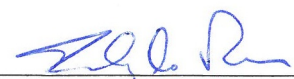
  
Terri Feinstein Sasnow

Counsel for the City

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SO ORDERED:

May 4, 2016  
Date

  
Edgardo Ramos  
United States District Judge